

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 30TH NOVEMBER 2006 / 9TH AGRAHAYANA 1928

Crl.MC.No. 3834 of 2006()

CRMP.3039/2006 of SESSIONS COURT, PALAKKAD
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PETITIONER: ACCUSED

1. VIPIN, AGED 20 YEARS,
S/O.PURUSHOTHAMAN, CHOONDANI PARAMBIL VEEDU,
KAITHARAM, NORTH PARAVOOR.
2. SHANMUGHAN, AGED 23 YEARS,
S/O.LATE KANNAN PILLAI,
CHEMBADY PARAMBU, ELAMAKKARA POST,
KOCHI-26.
3. BALAKRISHNAN, AGED 28 YEARS,
S/O.VASUDEVAN, MARATHARA VEEDU,
ELAMAKKARA POST, KOCHI-26.

BY ADV. SRI.PRADEESH CHACKO

RESPONDENTS: COMPLAINANT

1. SUB INSPECTOR OF POLICE,
ALATHUR POLICE STATION,
PALAKKAD.
2. THE STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 30/11/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3834 OF 2006

Dated this the 30th day of November, 2006.

ORDER

The petitioners are accused 4, 6 & 7 in Crime No.331 of 2005 of Alathur Police Station. The alleged incident in the crime took place on 26.07.2005. In the said crime, offences alleged are punishable inter alia under Section 302 read with 120 (B) I.P.C. Altogether there are 11 accused persons. Accused 1 & 2 allegedly entertained animosity against the deceased. They decided to put an end to the deceased. They allegedly entered into a criminal conspiracy with accused 3 to 11. Accused 8 to 11 along with the 3rd accused had allegedly indulged in the specific overt acts against the deceased. The petitioners were arrested. They continued in custody for a long period of time. As charge sheet was not filed within the period of 90 days, they claimed bail by default. The charge sheet has not been filed even today, it is conceded. They were granted bail by default subject to conditions. One of the conditions was they must report before the Investigating Officer on all Mondays and Thursdays. The said order was passed on 21.11.2005. The petitioners appeared before the Investigating Officer till 05.01.2006. Thereafter they did not appear before the Investigating Officer. The

Investigating Officer, in these circumstances, filed an application for cancellation of bail. By the impugned order, the learned Sessions Judge cancelled the bail granted to the petitioners. They have subsequently surrendered before court. They are now continuing in custody.

2. The learned counsel for the petitioners submits that cancellation of bail of the petitioners is totally unjustified. According to him, there was no default in appearance after 05.01.2006, as alleged. According to the counsel, on some subsequent dates also, the petitioners had appeared before the Investigating Officer, but they were not permitted to sign the relevant register. The counsel further submits that, at any rate, their failure/omission to sign the registers, may not be reckoned as an act of defiance of the order passed by the court. They are totally afraid of to go to Palakkad to sign the register. They apprehend physical harm, if they are present at Palakkad. In these circumstances, a lenient view may be taken and the petitioners' failure to appear before the Investigating Officer at Palakkad may not be permitted to entail loss of liberty to them.

3. The learned counsel for the petitioners further submits that even if the entire allegations were accepted, the

petitioners did not have any actual role in the commission of the crime. They were present with the other principal accused at an accommodation provided by accused 1 & 2. Even going by the allegations, they had only agreed to own the crime (and not to commit the crime). In these circumstances, it would be too harsh, if the petitioners were held to be not entitled to bail. As charge sheet has not been filed so far, they will have to languish in prison until investigation and trial are completed. A lenient view may be taken and subject to any appropriate conditions - except the condition that the petitioners must appear before the Investigating Officer at Palakkad, they may be enlarged on bail, prays the learned counsel for the petitioners.

4. Notice was given to the learned Public Prosecutor. Arguments have been advanced by the Prosecutor. The learned Prosecutor fairly concedes that the petitioners are not alleged to have committed any specific over acts against the accused persons. The contention that at worst the allegation against them is only that they had agreed to own the crime, is also not disputed and the relevant indications in the case diary also do point to the correctness of that contention. The learned Public

Prosecutor submits that as against the 7th accused, there are allegations that he is involved in a couple of other crimes. In these circumstances, the cancellation of bail, may not be interfered with, he submits.

5. I have considered all the relevant inputs. I take note of the fact that the investigation is not complete even now and accused 8 & 9 have not been apprehended so far. Indefinite detention of the petitioners in custody awaiting apprehension of accused 8 & 9, does not at all appear to be necessary. The indiscretion committed by them - of not appearing before the Investigating Officer after 05.01.2006, is taken note of. I also take note of the nature of the allegations raised against the petitioners. I am, in these circumstances, satisfied that subject to appropriate strict conditions, the petitioners can now be permitted to remain on bail. Taking note of the apprehension aired by the petitioners, their liability to appear in person before the Investigating Officer at Palakkad can be avoided. The submission of the learned Public Prosecutor that the petitioners must be prevented from having contact/access to the absconding accused is also taken note of and appropriate conditions to allay that apprehension can also be imposed.

6. In the result:

i) This Crl.M.C is allowed in part;

ii) The petitioners are directed to be enlarged on bail afresh on condition that they execute bonds for Rs.1 lakh with two solvent sureties each for the like sum to the satisfaction of the Judicial First Class Magistrate, Alathur;

iii) They shall reside within the jurisdiction of the Chief Judicial Magistrate, Trichur and shall appear before the C.J.M, Trichur on all Mondays and Thursdays until further orders unless such absence is condoned by the learned C.J.M for valid reasons. They shall furnish the address of their place of residence within the jurisdiction of the C.J.M, Trichur to the learned C.J.M, Trichur and the Investigating Officer, within 10 days of their release on the strength of this order.

iv) If the petitioners commit breach of the condition that they should appear before the learned C.J.M, Trichur, the learned C.J.M shall secure the arrest of the accused and forward them to the learned Magistrate having jurisdiction.

(R.BASANT, JUDGE)

rtr/